

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

JOSHUA LEE HELM,

Plaintiff,

vs.

YELLOWSTONE COUNTY
DETENTION CENTER,

Defendant.

CV 16-00053-BLG-SPW-TJC

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

Mr. Helm's original complaint was screened by the Court and it was determined that the Complaint failed to state a federal claim and failed to name a proper defendant. (Doc. 6.) Mr. Helm was given information on potential claims and an opportunity to file an amended complaint. (Doc. 13.) By Order dated June 14, 2017, the Court found that Mr. Helm's Amended Complaint (Doc. 15) also failed to state a federal claim and he was given an opportunity to file a second amended complaint. (Doc. 19.) Mr. Helm moved for and was granted an extension to file his second amended complaint on or before August 18, 2017. (Doc. 21). Mr. Helm, however, failed to file a second amended complaint.

Accordingly, for the reasons set forth in the Court's Orders dated August 1, 2016 (Doc. 13) and June 14, 2017 (Doc. 19), the Court finds that Mr. Helm has

failed to state a federal claim upon which relief may be granted and therefore issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Helm failed to state a claim upon which relief may be granted.

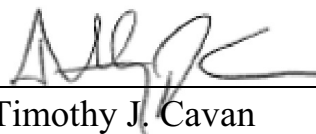
NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Helm may file objections to these Findings and Recommendations within

fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 19th day of September, 2017.

A handwritten signature in dark ink, appearing to read 'Timothy J. Cavan', is written over a horizontal line.

Timothy J. Cavan
United States Magistrate Judge

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Helm is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.